

**REVISED ANALYSIS**Author: Committee On Budget Analyst: Gail Hall Bill Number: AB 198Related Bills: \_\_\_\_\_ Telephone: 845-6111 Original Analysis Date: September 11, 2007Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_**SUBJECT:** Limited Liability Company Fee/Remedy For Final Court Decisions☐ REVENUE ESTIMATE CHANGED.☐ FURTHER CONCERNS IDENTIFIED.☐ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED  
STILL APPLIES.☒ OTHER – See comments below.**SUMMARY OF BILL**

Limited Liability Company Fee/Remedy For Final Court Decisions

**REASON FOR REVISION**

The “Economic Impact” discussion in the department’s analysis of the bill as amended September 11, 2007, is being revised because it contained a discussion from a previous version’s revenue estimate, instead of a discussion relating to the proposed remedy’s effect on the total potential revenue loss for taxable years prior to January 1, 2007. The correction is shown below by strike out for deletions and underline for additions.

The revenue figures in the chart in the September 11, 2007, analysis are unchanged. That chart is included in this analysis for convenience.

**POSITION**

Pending.

## Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

## Legislative Director

## Date

Brian Putler

12/20/07

## **ECONOMIC IMPACT (Revised)**

### Revenue Estimate

Based on data and assumptions discussed below, the revenue impact from this bill would be as follows:

Estimated Revenue Impact of AB 198 Enactment Assumed after June 30, 2007 Accrual Basis (\$ in Millions)			
2006/07	2007/08	2008/09	2009/10
\$0	- \$40	- \$45	- \$50

This bill does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

### **Revenue Discussion**

This bill would codify the remedy if the LLC fee statute is held discriminatory or unfairly apportioned in violation of the California Constitution or the laws or Constitution of the United States as applied. This remedy is consistent with the recent decision of the California Court of Appeal in *Macy's Department Stores, Inc. v. City and County of San Francisco*, which held that Due Process only required the city to refund the amount that was necessary to alleviate the amount of tax that was found to be improper in this case, and therefore, this bill has no revenue impact.

Under this bill, LLC fees would be determined based on assigned total income to California rather than worldwide total income. In 2004, there were \$246 million in LLC fees collected from 164,206 LLC returns. LLC fees are projected to grow to \$415 million in 2009.

This estimate is based on a representative sample of more than 1,800 LLC returns from 2004. A subset of more than 500 LLC returns reported sales factor information. For each LLC return in the subset, the LLC fee was first calculated using current law's worldwide total income. Second, the LLC fee was calculated using the proposed bill's assigned total income to California. The results were compared and based on the testing, it was determined that this bill would have decreased the amount of fees collected by just over 12%. The 12% was applied to the 2004 total LLC fees collected, and it was estimated that this bill would have decreased the amount of fees received in 2004 by 12%, or \$30 million (12% x \$246 million). The \$30 million was grown to subsequent years and converted to fiscal years.

~~Although the May 3, 2007, amendments replaced the method LLCs would use to determine total income assigned to California from utilizing an apportionment formula to utilizing current law's rules for computing the numerator of the sales factor, the revenue impact stayed the same. One reason the revenue impact stayed the same was due to rounding. The revenue estimate of the provisions of the bill as introduced February 23, 2007, would have resulted in a decrease of just under 12% in the amount of LLC fees collected versus the revenue estimate discussed in this analysis that results in a decrease of just over 12% in the amount of LLC fees collected. In addition, an LLC's fee is determined using a tiered chart, which means that although the method utilized to determine an LLC's total income assigned to California changed and resulted in a different amount of total income assigned to California, when applying the tiered chart, the LLC fee may remain the same.~~

The existing structure of LLC fees is being challenged in court. The estimate above is based on the assumption that the fees will ultimately be upheld. Should the courts reject the fees entirely and no legislative alternative is enacted, the potential revenue loss is estimated to be about \$1.3 billion for open tax years plus an ongoing cost that reaches over \$400 million per year by 2009/10. ~~AB 198 does not address the potential loss of \$1.3 billion.~~ AB 198 would reduce the potential ongoing revenue loss from about \$400 million to about \$50 million (for the 2009/10 fiscal year) and would reduce the open tax years' (2001 through 2006) potential revenue loss from \$1.3 billion to \$155 million (\$1.4 billion x 12% (reduction in fee) x 78% (refund claims) x 1.19 (for interest owed)). The 78% amount is based on data on the amount of fees for which refund claims have been made to date, and the 19% amount represents the average percentage of the interest due on the total fee refund.

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